

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TIMOTHY W. CLAY,)	
)	
Petitioner)	
)	
vs.)	No. CIV-08-68-C
)	
JUSTIN JONES, Director,)	
)	
Respondent)	

ORDER ADOPTING REPORT AND RECOMMENDATION

This action for habeas corpus relief brought by a prisoner, proceeding pro se, was referred to United States Magistrate Judge Gary M. Purcell consistent with the provisions of 28 U.S.C. § 636(b)(1)(B). Judge Purcell entered a Report and Recommendation on May 14, 2008, to which Petitioner has timely objected. The Court therefore considers the matter de novo.

In Petitioner's "Response to the Supplemental Report and Recommendation," which the Court construes as an objection, he never addresses the issue upon which Judge Purcell recommends dismissal, i.e., failure to exhaust state remedies. Instead, he again argues his right to relief under the facts and because the State has failed to respond to several of his arguments. The objection misses the point. It is not the merits which require dismissal, but rather the failure to exhaust. Petitioner has not disputed, nor presumably could he, either the facts or the law upon which that recommendation is based.

Accordingly, the Report and Recommendation is adopted in its entirety, and for the reasons announced therein, this action is dismissed, without prejudice. A judgment of dismissal will enter accordingly.

IT IS SO ORDERED this 5th day of June, 2008.



ROBIN J. CAUTHRON
United States District Judge